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2 **So Ordered.**



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A handwritten signature in black ink, reading "Frederick P. Corbit".

Frederick P. Corbit
Bankruptcy Judge

Dated: January 22nd, 2014

UNITED STATES BANKRUPTCY COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

In re:

No.: **13-01081-FPC11**

**DUANE MICHAEL AND DONNA JANE
BYRD, D/B/A KFC OF COEUR D'ALENE,
INC.,**

Chapter 11

FINDINGS OF FACT

Debtors.

THIS MATTER coming before the Court for hearing on December 19, 2013, upon the issues raised by Debtors' request for confirmation of Debtors' First Amended Plan of Reorganization, filed herein on August 26, 2013, under docket number 133, with attached Exhibit 1 filed on August 28, 2013, under docket number 136 (the "Plan"), and based upon the evidence produced, the Court now makes the following:

FINDINGS OF FACT

1. The Debtors' Plan was submitted to Creditors and other parties in interest;

Findings of Fact-1

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1 2. The Plan has been accepted in writing by the creditors and equity security
2 holders whose acceptance is required by law;

3 3. The provisions of Chapter 11 of the United States Code have been complied
4 with and the Plan has been proposed in good faith and not by any means forbidden by
5 law;

6 4. (a) Each holder of a claim or interest has accepted the Plan or will receive or
7 retain under the Plan property of a value, as of the effective date of the Plan, that is not
8 less than the amount that such holder would receive or retain if the Debtors were
9 liquidated under Chapter 7 of the Code on such date, or (b) the Plan does not discriminate
10 unfairly, and is fair and equitable with respect to each class of claims or interests that is
11 impaired under, and has not accepted the Plan;

12 5. All payments made or promised by the Debtors or by a person issuing
13 securities or acquiring property under the Plan or by any other person for services or for
14 costs and expenses in, or in connection with, the Plan and incident to the case, have been
15 fully disclosed to the Court and are reasonable and are hereby approved, or, if to be fixed
16 after confirmation of the Plan, will be subject to approval of the Court;

17 6. Confirmation of the Plan is not likely to be followed by the liquidation, or the
18 need for further financial reorganization of the Debtors, or (b) if the Plan is a plan of
19 liquidation, the Plan sets a time period in which liquidation will be accomplished, and
20 provides for the eventuality that the liquidation is not accomplished in that time period;

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Findings of Fact-2

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1 7. Pursuant to the Plan, the following acts or events constitute substantial
2 consummation of the Plan: sixty (60) days following Confirmation, provided that Debtors
3 have paid all installments provided by this Plan to be paid within that time;

4 8. Creditors were given Notice of Confirmation and no objections thereto were
5 made, or if made, have been withdrawn, resolved or overruled; and

6 9. It is proper that the Plan be confirmed, subject to the following:

7
8 a. Notwithstanding any provision of the Plan to the contrary, the
9 treatment of the claims of Class 9 members on page 14, lines 1 – 17 is hereby
10 replaced with the following: the claims of Class 9 members (collectively “Class
11 9”), including the claims asserted under proof of claim number 14, secured
12 against the Commercial Property (Plan, Art. 1, def. # 9), Debtors’ Business, and
13 any and all collateral securing the claims of Class 9 (Plan, Art. 1, def. #14) are
14 hereby fixed in the total sum of \$800,000.00, with interest accruing at a rate of
15 7.35% per annum, payable at \$5,943.48 per month for sixty (60) months (the
16 “Secured Claim of Class 9 against Debtors”), with the first payment due on the
17 first day of the first month following the Effective Date (Plan, Art. 1, def. #19), and
18 each subsequent payment due on the first day of the month thereafter, at which
19 time the remaining principal will become due as a balloon payment on the
20 Secured Claim of Class 9 against Debtors in full satisfaction of the secured
21 portion of the Secured Claim of Class 9 against Debtors. The remaining claims
22 of Class 9 shall hold no collateral and shall be treated and paid as a Class 16
23 (Unsecured) Claim. Debtors may pay Class 9, its successors, or assigns, any
24 remaining balance on the Secured Claim of Class 9 against Debtors in full at any
25 time, less any amounts previously paid by Debtors to Class 9 on the Secured

Findings of Fact-3

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1 Claim of Class 9 against Debtors, its successors, or assigns, without penalty or
2 interest.

3 b. KFC of Coeur d' Alene, Inc. and Class 9 have agreed to settle the
4 Claims of Class 9 against Debtors and KFC of Coeur d' Alene, Inc. and the loan
5 to KFC of Coeur d' Alene, Inc. by Class 9, guaranteed by Debtors including the
6 claims set forth in proof of claim number 13, pursuant to a Settlement
7 Agreement, which provides in part, that KFC of Coeur d' Alene, Inc. will pay the
8 total sum of \$22,500.00 in monthly installments of \$625.00 over thirty six (36)
9 months, with no interest (the "Settlement Amount"), with the first payment due on
10 the first day of the first month following the Effective Date (Plan, Art. 1, def. #19).
11 In addition, the Settlement Agreement provides that Class 9 does not release
12 KFC of Coeur d' Alene, Inc. until the full Settlement Amount is paid, and upon the
13 full payment of the Settlement Amount by KFC of Coeur d' Alene, Inc., Class 9
14 releases its lien on any and all property owned by KFC of Coeur d' Alene, Inc.
15 and Class 9 forgives the remaining debt owed to Class 9 by KFC of Coeur d'
16 Alene, Inc. (the "Remaining Debt"); provided however, that the Remaining Debt
17 that was guaranteed by Debtors, shall be treated and paid as a Class 16
18 (Unsecured) Claim. Any payments made by KFC of Coeur d' Alene, Inc. to Class
19 9 shall reduce its Class 16 (Unsecured) Claim. KFC of Coeur d' Alene, Inc. may
20 pay Class 9, its successors, or assigns, any remaining balance on the Settlement
21 Amount in full at any time, less any amounts previously paid by KFC of Coeur d'
22 Alene, Inc. to Class 9 on the Settlement Amount, its successors, or assigns,
23 without penalty or interest.
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Findings of Fact-4

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1 c. Except as expressly modified by the Plan or this Confirmation
2 Order, all terms and conditions of all agreements by and between Debtors and
3 Class 9 shall remain in full force and effect.

4 d. Notwithstanding any provision of the Plan to the contrary, Debtors
5 shall pay Disbursing Agent the sum of One Thousand One Hundred Dollars
6 (\$1,100.00) per month for a period of sixty (60) months, or such additional time
7 period until the Allowed Claims of classes numbered 1 (admin) and 3 (IRS and
8 State of Idaho) are paid in full, if the proceeds of sale from the property to be sold
9 under the Plan is insufficient to satisfy in full the Allowed Claims of classes 1
10 (admin) and 3 (IRS and State of Idaho). The first payment shall be due within thirty
11 (30) days of Confirmation.
12

13 ///END OF ORDER///
14

15 PRESENTED BY:

16 SOUTHWELL & O'ROURKE, P.S.

17
18 BY: s/ Kevin O'Rourke
19 KEVIN O'ROURKE, WSBA #28912
Attorneys for Debtors

20 APPROVED AS TO FORM AND CONTENT
21 NOTICE OF PRESENTMENT WAIVED

22 LUKINS & ANNIS, P.S.

23 BY: s/ Jed Morris
24 JED MORRIS, WSBA #13832
25 Attorneys for Class 9

Findings of Fact-5

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